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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/743,848
Filing Date: December 22, 2003
Appellant(s): COWAN ET AL.

David A Fox
Reg. No. 38,807
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 4, 2009 appealing from the Office action mailed October 3, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief – AT&T Intellectual Property.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6721748	Knight et al (filed May 13, 2002)	4/2004
7260564	Lynn et al (filed April 2001)	8-2007
2004/0125133	Pea et al (filed 12-2002)	7-2004
5404	Levinson (filed 11-1991)	4-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 6-10, 12-17, 19-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knight et al., U.S. Patent No. 6,721,748 (hereinafter Knight), in view

of Pea et al., U.S. PGPub. No. 2004/0125133 (hereinafter Pea) and Lynn et al., U.S. Patent No. 7,260,564 (hereinafter Lynn).

As for Claims 1 and 14, Knight teaches:

allowing a consumer to join a community (See e.g. Knight - subscribers – col. 5, lines 9-14);

monitoring access to content by members of the community (See e.g. Knight - col. 6, lines 48-53)...

determining a community interest in the content in response to members of the community accessing the content (See e.g. Knight - col. 6, lines 48-58); and

automatically distributing the content to the consumer over the distribution network in response to the community interest (See e.g. Knight - col. 6, lines 32-38).

Knight does not expressly call its network a grid computing network. However, Pea teaches the monitoring being performed by a grid computing platform implemented by a plurality of geographically dispersed network elements, the grid computing platform executing a grid application to control resources within a distribution network (See e.g. Pea - paragraphs [0061] and [0095-0109]).

Knight teaches delivery of based on the community the consumer joined and the community interest in the content (See e.g. Knight – Abstract and col. 6, lines 32-60). Knight does not expressly call its digital content broadcast television. However, Lynn teaches storing the broadcast television programming on a consumer digital video

recorder accessible over a consumer network in communication with the distribution network without the consumer initiating the storing (See e.g. Lynn – Abstract – proactively harvesting video content, collected and maintained, Figure 1, col. col. 4, lines 45-58, col. 7, lines 17-40 – broadcast TV and set-top boxes, col. 8, lines 64-67 - guide has categories for interest, col. 9, lines 20-27, col. 10, lines 58-67).

Knight and Pea are from the analogous art of content distribution. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Pea to have combined Knight and Pea. The motivation to combine Knight and Pea is improve access to content in a networked user community. Pea adds details about the video creation and grid networking for distribution to the system of Knight. Both deal with authoring, sharing and distributing content to users. Both track interaction profiles and user communities. It would have been obvious to one of ordinary skill in the art to have combined Knight and Pea.

Knight and Lynn are from the analogous art of personalized content distribution. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Lynn to have combined Knight and Lynn. The motivation to combine Knight and Lynn is improve access to personalized content in a networked user community. Lynn adds the storage devices of a set top box, DVD, and VCR to the community content distribution system of Knight. Knight automates the discovery of content of interest and Lynn also automates the discovery of video. It would have been obvious to one of ordinary skill in the art to have combined Knight and Lynn.

As for Claim 7, Knight teaches:

A system for distributing content to consumers, the system comprising:

a network element receiving a request from a consumer to join a community (See e.g. Knight - subscribers – col. 5, lines 9-14);

a database coupled to the network element maintaining records of one or more communities associated with the consumer (See e.g. Knight – col. 6, lines 53-60);

a consumer network in communication with the network element (See e.g. Knight – col. 6, lines 53-60 and Figure 2);

the network element monitoring access to content by members of the community (See e.g. Knight - col. 6, lines 48-53);

the network element determining a community interest in the content in response to members of the community accessing the content (See e.g. Knight - col. 6, lines 48-58); and

the network element automatically distributing the content to the consumer network in response to the community interest (See e.g. Knight - col. 6, lines 32-38).

Knight does not expressly call its network a grid computing network. However, Pea teaches the network element being part of a grid computing platform implemented by a plurality of geographically dispersed network elements, the grid computing platform executing a grid application to control resources within a distribution network (See e.g. Pea - paragraphs [0061] and [0095-0109]).

Knight teaches delivery of content based on the community the consumer joined and the community interest in the content (See e.g. Knight – Abstract and col. 6, lines 32-60). Knight does not expressly call its digital content broadcast television. However, Lynn teaches the network element automatically distributing the content to the consumer network in response to the community interest, the consumer network storing the broadcast television programming on a consumer digital video recorder accessible over the consumer network without the consumer initiating the storing (See e.g. Lynn – Abstract – proactively harvesting video content, collected and maintained, Figure 1, col. col. 4, lines 45-58, col. 7, lines 17-40 – broadcast TV and set-top boxes, col. 8, lines 64-67 - guide has categories for interest, col. 9, lines 20-27, col. 10, lines 58-67).

Knight and Pea are from the analogous art of content distribution. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Pea to have combined Knight and Pea. The motivation to combine Knight and Pea is improve access to content in a networked user community. Pea adds details about the video creation and grid networking for distribution to the system of Knight. Both deal with authoring, sharing and distributing content to users. Both track interaction profiles and user communities.

Knight and Lynn are from the analogous art of personalized content distribution. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Lynn to have combined Knight and Lynn. The motivation to combine Knight and Lynn is improve access to personalized content in a networked user community. Lynn adds the storage devices of a set top box, DVD,

and VCR to the community content distribution system of Knight. Knight automates the discovery of content of interest and Lynn also automates the discovery of video. It would have been obvious to one of ordinary skill in the art to have combined Knight and Lynn.

As for Claims 2, 8, and 15, Knight as modified teaches the parent Claims of 1, 7, and 14. Knight also teaches wherein: the community interest is determined based on a percentage of members in the community that have accessed the content (See e.g. Knight - col. 6, lines 38-53, col. 7, lines 14-18 Fig 3D hot list, and Claim 2).

As for Claims 3, 9, and 16, Knight as modified teaches the parent Claims of 1-2, 7-8, and 14-15. Knight also teaches the community interest is compared to a reference to initiate the automatically distributing (See e.g. Knight - col. 6, lines 33-67).

As for Claim 10, Knight as modified teaches the parent Claim 7. Knight also teaches wherein: the automatically distributing includes storing the content on a consumer storage device associated with the consumer (See e.g. Knight - col. 6, lines 33-37 and lines 53-67).

As for Claims 6, 12, and 19, Knight as modified teaches the parent Claims of 1, 7, and 14. Knight also teaches wherein: the automatically distributing the content is

dependent on a consumer preference to receive automatically distributed content (See e.g. Knight - col. 23, lines 49-67).

As for Claim 23, Knight as modified teaches the parent Claim 7. Knight also teaches a plurality of network elements including… consumer storage devices and network storage devices (See e.g. Knight – col. 6, lines 53-60, col. 22, lines 58-67 and col. 23, lines 53-60). Knight does not expressly teach set-top boxes. However, Lynn teaches set-top boxes (See e.g. – Lynn – col. 7, lines 19-40).

As for Claim 24, Knight as modified teaches the parent Claim 1. Knight also teaches wherein the grid computing platform determines when to store a video program in response to customer preference and customer viewing habits (See e.g. Knight – col. 6, lines 31-52 and col. 7, lines 5-18).

As for Claim 25, Knight as modified teaches the parent Claim 1 and 24. Knight also teaches wherein the grid computing platform determines where to store the video program across a plurality of network elements, including storing the video program on a consumer storage device (See e.g. Knight – col. 6, lines 53-60, col. 22, lines 58-67 and col. 23, lines 53-60).

As for Claim 22, Knight teaches:

A controller for controlling distribution of content, the controller comprising:

a processor ..., the processor executing processing including:

receiving input from a consumer to join a community (See e.g. Knight - subscribers – col. 5, lines 9-14),

receiving content having a community interest in the content in response to members of the community accessing the content (See e.g. Knight - col. 6, lines 38-53, col. 7, lines 14-18, Fig 3D hot list, and Claim 2); and

notifying the consumer that the content is available (See e.g. Knight - col. 26, lines 23-26- alerted and col. 23, lines 49-67) ... the notifying based on the community the consumer joined and the community interest in the content (See e.g. Knight – Abstract and col. 6, lines 32-60).

Knight does not expressly call its network a grid computing network. However, Pea teaches a processor executing a grid application as part of a grid computing platform implemented by a plurality of geographically dispersed network elements, the grid computing platform executing a grid application to control resources within a distribution network (See e.g. Pea - paragraphs [0061] and [0095-0109])..

Knight does not expressly call its digital content broadcast television. However, Lynn teaches the content being broadcast television programming (See e.g. Lynn – Abstract – proactively harvesting video content, collected and maintained, Figure 1, col. col. 4, lines 45-58, col. 7, lines 17-40 – broadcast TV and set-top boxes). Lynn also

teaches for storage on a storage device accessible over a consumer network in communication with the distribution network (See e.g. Lynn – Abstract – proactively harvesting video content, collected and maintained, Figure 1, col. col. 4, lines 45-58, col. 7, lines 17-40 – broadcast TV and set-top boxes, col. 8, lines 64-67 - guide has categories for interest, col. 9, lines 20-27, col. 10, lines 58-67).

Knight and Pea are from the analogous art of content distribution. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Pea to have combined Knight and Pea. The motivation to combine Knight and Pea is improve access to content in a networked user community. Pea adds details about the video creation and grid networking for distribution to the system of Knight. Both deal with authoring, sharing and distributing content to users. Both track interaction profiles and user communities.

Knight and Lynn are from the analogous art of personalized content distribution. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Lynn to have combined Knight and Lynn. The motivation to combine Knight and Lynn is improve access to personalized content in a networked user community. Lynn adds the storage devices of a set top box, DVD, and VCR to the community content distribution system of Knight. Knight automates the discovery of content of interest and Lynn also automates the discovery of video. It would have been obvious to one of ordinary skill in the art to have combined Knight and Lynn.

Claims 5, 11, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knight as modified by Pea and Lynn above, and further in view of Levinson, U.S. Patent No. 5,404,505 (hereinafter Levinson).

As for Claims 5, 11, and 18, Knight as modified teaches the parent Claims of 1, 7, 10, and 14. Knight also teaches further comprising:

notifying the consumer that the content is available on the consumer storage device (See e.g. Knight - col. 26, lines 23-26- alerted and col. 23, lines 49-67).

Knight considers subscription fees (See e.g. Knight - col. 28, lines 23-34) and charging for the use of features (See e.g. Knight - col. 18, lines 42-45) but does not expressly teach billing a customer based on the content they view. However, Levinson teaches billing the consumer upon the consumer accessing the content on the consumer storage device (See e.g. Levinson – col. 4, lines 26-30).

The motivation to combine Knight and Pea and Lynn is explained above with Claim 1. Knight and Levinson are from the providing content to subscribers. It would have been obvious to one of ordinary skill in the art at the time the invention was made having the teachings of Knight and Levinson to have combined Knight and Levinson. The motivation to combine Knight and Levinson comes from common practice of charging consumers for a service. Knight has subscription fees (See e.g. Knight - col. 28, lines 23-34) and charging for the use of features (See e.g. Knight - col. 18, lines 42-45). Levinson provides a common enhancement to that billing system that links the charge to the content item accessed.

(10) Response to Argument

As for Claims 1, 7 and 14, Appellant argues that the references fail to teach "storing the broadcast television programming on a consumer digital video recorder accessible over a consumer network in communication with the distribution network without the consumer initiating the storing, the storing based on the community the consumer joined and the community interest in the content." Examiner disagrees because Knight teaches "storing the ... programming on a consumer ... recorder accessible over a consumer network in communication with the distribution network without the consumer initiating the storing, the storing based on the community the consumer joined and the community interest in the content" and Lynn adds the broadcast television and consumer digital video recorder. The teachings of references must be considered together and not separately. When combined, all the requirements of the claims are taught. Appellant admits that Knight teaches downloading content based on interests. Appellant only disputes that these interests are community interests. Knight states repeatedly that it relies on the interests of the community of users in order to determine which content to make available to the community and to particular users. Beginning with the Abstract of Knight, a "series of community and customized software bots" are used to "constantly adjust content retrieval, storage and presentation in response to changing community interests, desires, and the like (See

Knight - Abstract). Throughout its specification, Knight discusses making the content germane to the interests of the community of users. In col. 4, Knight describes classifying content for a particular community of users (See Knight – lines 12-18). Next, in the summary of invention, Knight continues to focus on providing users with content based on their interests and that of the community (See e.g. Knight - col. 5, lines 10-28). It also allows all users to use the community bots. The content provided to a particular user is based on predictions of what that user would be interested in by using community interests, interests of other members, and content popularity (See e.g. Knight – col. 7, lines 10- 29). Knight also teaches categories for the data content that are "structured to mirror interest and organizational constructs within the community of users" and that the menu reflects the "collective learnings of the community as a whole" (See Knight - col. 8, lines 45-54 and col. 15, lines 15-22). Knight also provides features that are of "general interest statistical information for the members of the electronic community sharing the message board system" including Top 10 lists and other most popular listings (See e.g. Knight - col. 18, lines 47-67). Knight provides for the automatic downloading of content for a user (See e.g. Knight - col. 23, lines 50-55). This content is determined based on monitoring and comparing the behavior of the community of users (See e.g. Knight –col. 24, lines 1-44, col. 26, lines 5-35 and col. 27, lines 45-50). The search robots retrieve data and download it to a user interface based on community interest and behaviors (See e.g. Knight – col. 28, lines 8-34). Clearly, these passages show that Knight uses the interests of the community to determine what content to automatically provide to users. The rejection does not cite Knight for the

broadcast television and digital video recording elements of the claims. While Knight teaches generic data and content, Lynn adds the specifics of broadcast television and a digital video recorder (See e.g. Lynn- Abstract – proactively harvesting video content from the network via a video spider and Figure 1, 4-5). Lynn teaches the use of broadcast television content and digital video recording along with the Internet-based system of Knight. Lynn collects and organizes television content (See e.g. Lynn – col. 4, lines 45-65, col. 7, lines 19-46, col. 12, lines 10-25, col. 13, lines 7-31). When the teachings of these references are put together, they make obvious the claimed invention. Accordingly, Claims 1, 7 and 14 are rejected based on Knight, in view of Pea and Lynn.

Claims 2-6, 8-13, and 15-20 are dependent on these claims 1, 7 and 14 and are at least rejected for the reasons stated above.

Regarding Claims 2, 8 and 15, Appellant additionally argues that the references do not teach "the community interest is determined based on a percentage of members in the community that have accessed the content". Examiner disagrees because Knight examines the popularity of content as well as monitoring general user interaction with content. Popularity is how many (a percentage or total number) community members have accessed content (See e.g. Knight – col. 5, lines 10-42, col. 6, lines 38-53, col. 7, liens 14-18, col. 18, lines 47-67, col. 24, lines 1-44, col. 26, lines 5-35 and col. 27, lines 45-50, col. 28, lines 8-34 and Figure 3D and Claim 2). Accordingly, Knight also teaches

"the community interest is determined based on a percentage of members in the community that have accessed the content".

Regarding Claims 3, 9 and 16, Appellant additionally argues that the references of not teach "the community interest is compared to a reference to initiate the automatically distributing". Examiner disagrees because Knight teaches automatic downloading based on comparisons of usage patterns and rules (See e.g. Knight – col. 6, lines 33-67, col. 7, lines 14-28, col. 9, lines 37-65, col. 10, lines 1-50, col. 18, lines 50-67, col. 20, lines 15-50). Accordingly, Knight also teaches "the community interest is compared to a reference to initiate the automatically distributing".

Regarding Claim 22, Appellant argues the same issues as for Claims 1, 7 and 14 above. Therefore, the response of the Examiner is also the same as for Claims 1, 7 and 14 above.

Regarding Claims 5, 11 and 18, Appellant only argues that the Levinson reference does not cure the issues related to the "storing" step in the parent claims. No separate argument based on the additions of these claims is made. Therefore, the response of the Examiner is also the same as for Claims 1, 7 and 14 above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Christyann RF Pulliam/

Examiner, Art Unit 2165

May 11, 2009

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